

35436

SERVICE DATE – JANUARY 6, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34417 (Sub-No. 2)]

Union Pacific Railroad Company–Temporary Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant additional local trackage rights to UP¹ over a BNSF line of railroad between BNSF milepost 113.0 and BNSF milepost 117.0 near Endicott, NE, a distance of approximately 4.0 miles.²

¹ UP submits that the trackage rights being granted here are only temporary rights, but, because they are “local” rather than “overhead” rights, they do not qualify for the Board’s new class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See Railroad Consolidation Procedures–Exemption for Temporary Trackage Rights, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34417 (Sub-No. 3), Union Pacific Railroad Company–Temporary Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, wherein UP and BNSF request that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about May 16, 2005. That petition will be addressed by the Board in a separate decision.

² The original trackage rights granted in Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, Finance Docket No. 34417 (STB served Nov. 3, 2003), extended between BNSF milepost 114.5 and BNSF

(continued...)

The transaction was scheduled to be consummated on December 24, 2004.

The purpose of this transaction is to modify the temporary trackage rights exempted in Finance Docket No. 34417 to include an additional 1.5 miles of trackage and to extend the expiration date to on or about May 16, 2005. The modified rights will permit UP to continue to serve the shipper at Endicott until permanent arrangements can be made for alternate rail service to this shipper, and will permit UP to handle trains carrying materials from the portion of the line that is being salvaged.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.-Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

²(...continued)

milepost 117.0 near Endicott, NE, a distance of approximately 2.5 miles. By decision served December 8, 2003, in Finance Docket No. 34417 (Sub-No. 1), the Board granted an exemption to permit the trackage rights granted in Finance Docket No. 34417 to expire. At that time, it was anticipated by the parties that the rights would expire on or about October 15, 2004. However, this authority has not yet been exercised.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34417 (Sub-No. 2) must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: December 22, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary